



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 2, 1991

Mr. Richard D. Monroe
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR91-597

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14139.

You have received a request for access to information relating to a Texas Department of Transportation construction project. Specifically, the requestor seeks the certified payrolls for the "North Central Project" under construction by Gilbert Texas Construction. You claim the requested information is excepted from required public disclosure by section 3(a)(4) of the Open Records Act.

Section 3(a)(4) excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to protect governmental interests in commercial transactions. Open Records Decision No. 593 (1991) at 2. It has most often been applied to competitive bidding situations prior to the award of a contract. *See, e.g.*, Open Records Decision Nos. 541 (1990) at 4-5; 75 (1975). The governmental body must demonstrate the possibility of some specific harm in a particular competitive situation. Open Records Decision No. 593. Once the competitive bidding process has ceased and a contract has been awarded, section 3(a)(4) will not except from disclosure either information submitted with a bid or the contract itself. Open Records Decision No. 541 at 5.

You advise us that the requested information relates to a contract that has already been awarded and that, as regards this particular situation, the competitive bidding process has ceased. You have also communicated to our office that the requested information does not relate to any other specific anticipated competitive situation. Accordingly, you may not properly invoke the section 3(a)(4) exception.

Although you did not claim a section 3(a)(1) exception, we note that the requested documents include information that is ordinarily excepted from required public disclosure by common-law privacy interests, as incorporated into the Open Records Act by section 3(a)(1).¹ Section 3(a)(1) protects information only if its release would cause an invasion of privacy under the test articulated by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court ruled that common-law privacy excepts only "information contain[ing] highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person," provided "the information is not of legitimate concern to the public." Disclosure of personal financial information about an individual ordinarily is of no legitimate concern to the public. Open Records Decision No. 545 (1990) at 3.

Upon examination of the documents submitted to us for review, we find that the payroll information reflects private financial information relating to persons who are not employees of a governmental body. Such information is excepted from required public disclosure by common-law privacy interests. We conclude, then, that the names of the employees and any information that would tend to identify them must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act. The remaining information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

¹The attorney general will raise section 3(a)(1) on behalf of a governmental body. Open Records Decision No. 481 (1987) at 2.

a published open records decision. If you have questions about this ruling, please refer to OR91-597.

Yours very truly,

A handwritten signature in cursive script that reads "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/lcd

Ref.: ID# 14139

cc: Mr. George E. Williamson
Vice President
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